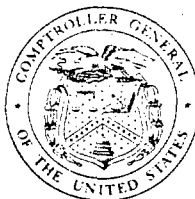


Proc. I

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

9578

FILE: B-193299

DATE: March 29, 1979

MATTER OF: E-M Southwest, Inc.

DIGEST:

[Protest of Bid Rejection as Nonresponsive]

1. Bid was properly determined nonresponsive where required descriptive literature showed that equipment had fixed crank control, whereas IFB specifications required programmable crank control.
2. Protest as to one aspect of one awardee's responsiveness to IFB and inquiry for documents which led to protest of another aspect of both awardees' responsiveness coming about month after learning of awards are untimely.

DLG-01347

E-M Southwest, Inc. (E-M), lodged a double protest under invitation for bids (IFB) DAAK01-78-B-1533 issued by the United States Army Troop Support and Aviation Materiel Readiness Command (TSARCOM), St. Louis, Missouri.

First, E-M protested that its bid should not have been rejected as nonresponsive. Second, it protested the awards made to two other bidders on the grounds that their bids were nonresponsive.

The first protest was filed with our Office timely. The protest resulted from the contracting officer's rejection of the E-M bid because the descriptive literature furnished with the bid indicated that the equipment had a fixed crank control, whereas the IFB required a programmable crank control. In that regard, IFB amendment 0001 provides that "Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid."

E-M contends that the bid should not have been rejected because its equipment is capable of meeting

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although
the programmable feature and it furnished standard commercial literature because that was requested and not a proposal. E-M states that, regardless of the descriptive literature supplied, the specification would be the determining document and any failure of the equipment provided under the contract to comply would result in rejection of the equipment.


We agree with the contracting agency that the E-M bid is nonresponsive. The submission of descriptive data, where the data is used for bid evaluation, is a matter of responsiveness and where the data indicates a deviation from the specifications, rejection of the bid is required. See Fabcraft, Inc., dba FABCO, B-186973, November 5, 1976, 76-2 CPD 384. The descriptive literature is part of the offer and acceptance of any deviation from the specifications in the literature would not result in the legal obligation to perform sought by the Government. Storage Technology Corporation--Reconsideration, B-190035, March 31, 1978, 78-1 CPD 257.

Accordingly, the protest against the rejection of the bid is denied.

The matter which forms the basis of the second protest to our Office was not diligently pursued. On October 3, 1978, E-M was informed orally by the contracting officer that award had been made. But even if we assume that E-M had no reason to know of the awards until it received that information in the contracting agency's report to our Office dated December 7, 1978, to which E-M replied by letter of December 18, 1978, E-M did not make any inquiry about the responsiveness of the successful bids and protest against one of them until January 16, 1979, at a conference in our Office provided under the Bid Protest Procedures, 4 C.F.R. § 20.7 (1978). The protest as to one aspect of one awardee's responsiveness to the IFB and the inquiry for documents which led to the protest of another aspect of both awardees' responsiveness coming about a month after learning of the awards are untimely. Although E-M protested promptly following receipt of the documents requested from the contracting agency at the January 16 meeting, it was not assiduous in requesting the documents. Our Bid Protest Procedures require that protests be filed

+ not for consideration

"not later than 10 days after the basis for protest is known or should have been known, whichever is earlier." 4 C.F.R. § 20.2(b)(2) (1978). Accordingly, the protests against the awards are not for consideration. See Square Deal Trucking Company, Incorporated, B-183529, August 19, 1975, 75-2 CPD 115; Graphics, Communications Systems, Inc., B-186715, July 23, 1976, 76-2 CPD 75.


Deputy Comptroller General
of the United States